

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

JULIE JENSEN, individually
and
CHARLES MEYER, by and through his next
friend JULIE JENSEN,
Plaintiffs,

v.

ELAINE CASHIN, as ADMINISTRATOR for
the ESTATE OF NORMAN WOOLARD
and
PAUL LENO and ELAINE LENO, as
ADMINISTRATORS for the ESTATE OF
PHILIP LENO,
Defendants/Counterclaim Plaintiffs,:

v.

JULIE JENSEN, individually,
and
CHARLES MEYER, by and through his next
friend JULIE JENSEN,
Counterclaim Defendants.

No. 2:06-cv-41

ORDER

This is an action arising out of a fatal automobile accident that occurred in Westmore, Vermont on August 24, 2004, in which Norman Woolard and Philip Leno were killed. Before the Court is Defendant/Counterclaim Plaintiff Elaine Cashin's Motion to Quash Notice of Deposition Duces Tecum and Supplemental Notice of Deposition Duces Tecum (Doc. 107). This motion was filed February 8, 2007, regarding a scheduled February 9, 2007, deposition of Ms. Cashin. In part, it raises the same issues as the Defendants/Counterclaim Plaintiffs' Joint Motion to Quash

Subpoena on Stephen P. Adams, M.D., the Chief Medical Examiner for the State of Vermont. Therefore, this Order resolves both Motions.

Defendant/Counterclaim Plaintiff Elaine Cashin's Motion to Quash Notice of Deposition Duces Tecum and Supplemental Notice of Deposition Duces Tecum is DENIED. Ms. Cashin's deposition should take place as scheduled. With the exception of Norman Woolard's autopsy report, information requested in the Notices of Deposition Duces Tecum that Ms. Cashin objects to disclosing should be withheld for the time being. The autopsy report should be disclosed, as discussed in more detail below. The Court will rule on the remaining discovery issues when they are properly before it.

The Defendants/Counterclaim Plaintiffs' Joint Motion to Quash Subpoena on Stephen P. Adams, M.D. (Doc. 91), is DENIED. The Motion seeks to quash the subpoena on the grounds that the autopsy reports of Norman Woolard and Philip Leno that it seeks are confidential and privileged. Vermont Rule of Evidence 503(d) states:

There is **no privilege** under this rule as to a communication relevant to an issue of the physical, mental, or emotional condition of the patient in any proceeding in which he relies upon the condition as an element of his claim or defense or, **after the patient's death, in any proceeding in which any party relies upon the condition as an element of his claim or defense . .**

Vt. R. Evid. 503(d)(emphasis added).

Since Woolard and Leno are deceased, the information may be disclosed if any party relies upon their condition as an element of its claim or defense. The Counterclaim Defendants are asserting a defense of necessity, arguing that Leno and Woolard's use of drugs prompted Meyer to drive the car. Clearly they are relying on Leno and Woolard's conditions as an element of this claim. The autopsy records therefore are relevant and discoverable.

Dated at Burlington, Vermont this 8th day of February, 2007.

/s/ William K. Sessions III
William K. Sessions III
Chief Judge